

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
HOWARD NAGLE,)
)
Appellant,)
)
v.)
)
SOUTHWEST AIR POLLUTION)
CONTROL AUTHORITY,)
)
Respondent.)

PCHB No. 77-12

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the appeal of a \$100 civil penalty for outdoor burning allegedly in violation of respondent's Section 4.01 of Regulation I having come on regularly for formal hearing on the 23d day of May, 1977 in Longview, Washington, and appellant Howard Nagle appearing pro se, and respondent Southwest Air Pollution Control Authority appearing through its attorney James D. Ladley with William A. Harrison, hearing examiner presiding, and the Board having considered the exhibits, records and files herein and having reviewed the Proposed Findings of Fact, Conclusions of Law and Order of the presiding officer mailed to

1 the parties on the 31st day of May, 1977, and more than twenty days
2 having elapsed from said service, and

3 The Board having received no exceptions to said Proposed Findings
4 of Fact, Conclusions of Law and Order and the Board being fully advised
5 in the premises, now therefore,


6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Proposed
7 Findings of Fact, Conclusions of Law and Order dated the 31st day of
8 May, 1977, and incorporated by reference herein and attached hereto as
9 Exhibit A, are adopted and hereby entered as the Board's Final Findings
10 of Fact, Conclusions of Law and Order herein.

11 DONE at Lacey, Washington, this 5th day of July, 1977.

12 POLLUTION CONTROL HEARINGS BOARD

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14 W. A. GISSBERG, Chairman

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16 CHRIS SMITH, Member

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18 DAVE J. MOONEY, Member

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER

1 CERTIFICATION OF MAILING

2 I, LaRene Barlin, certify that I mailed, postage prepaid, copies
3 of the foregoing document on the 5th day of July, 1977,
4 to each of the following-named parties at the last known post office
5 addresses, with the proper postage affixed to the respective envelopes:

6 Mr James D. Ladley
7 Attorney at Law
8 P. O. Box 938
9 Vancouver, Washington 98660

10 Mr. Howard C. Nagle
11 1204 Behshel Hts
12 Kelso, Washington 98626

13 Southwest Air Pollution Control Authority
14 7601-H N.E. Hazel Dell Avenue
15 Vancouver, Washington 98665

16 

17 LARENE BARLIN
18 POLLUTION CONTROL HEARINGS BOARD
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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
HOWARD NAGLE,

Appellant,

v.

SOUTHWEST AIR POLLUTION
CONTROL AUTHORITY,

Respondent.

PCHB No. 77-12

FINDINGS OF FACT,
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AND ORDER

This matter, the appeal of a \$100 civil penalty for outdoor burning allegedly in violation of respondent's Section 4.01 of Regulation I came on for hearing before the Pollution Control Hearings Board convened at Longview, Washington on May 23, 1977. Hearing examiner William A. Harrison presided alone. Respondent elected a formal hearing.

Appellant, Howard Nagle, appeared and represented himself. Respondent appeared by and through its attorney, James D. Ladley. Court reporter Karen Joubert recorded the proceedings.

Witnesses were sworn and testified. Exhibits were examined.

EXHIBIT A

1 From testimony heard and exhibits examined, the Pollution Control
2 Hearings Board makes these

3 FINDINGS OF FACT

4 I

5 On January 11, 1977 the appellant, Howard Nagle, ignited an
6 outdoor fire at a building site in Longview, Washington. The appellant,
7 a building contractor, was constructing a "spec house" on the site and
8 ignited the fire to dispose of leftover construction materials. The
9 appellant owned the land upon which the spec house was being constructed
10 and upon which the fire was ignited.

11 II

12 The fire was some eight feet in diameter and 18 inches high and
13 contained plywood, 2 x 4s and not more than ten feet of insulated
14 wiring.

15 III

16 Shortly after the fire was ignited a policeman detected the fire
17 and instructed the appellant to extinguish it. The appellant attempted
18 to extinguish it but left the scene of the fire before the fire was
19 out. Shortly thereafter the fire came to the attention of the Longview
20 Fire Department which in turn notified the respondent, Southwest Air
21 Pollution Control Authority. Inspectors for both the Longview Fire
22 Department and the respondent arrived at the site of the fire at
23 approximately 9:50 AM and observed that the dimensions and contents of
24 the fire were as described above. The fire was extinguished by the
25 Longview Fire Department and a formal notice of violation (R-2) was
26 subsequently served upon appellant.

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

IV

The appellant has no prior record of any violation of the regulations of respondent. The appellant was unaware that the respondent restricts open burning or that a permit from the respondent is required in order to conduct open burning. The appellant has been a building contractor for a relatively short period of time.

V

Any Conclusion of Law hereinafter recited which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Pollution Control Hearings Board comes to these

CONCLUSIONS OF LAW

I

The Legislature of the State of Washington has enacted the following policy on outdoor fires:

It is the policy of the state to achieve and maintain high levels of air quality and to this end to minimize to the greatest extent reasonably possible the burning of outdoor fires. Consistent with this policy, the legislature declares that such fires should be allowed only on a limited basis under strict regulation and close control. (RCW 70.94.740).

Pursuant to this and other legislative authority, the respondent has adopted its Regulation I, Article IV, Section 4.01(b) which provides in relevant part:

No person shall ignite, cause to be ignited, permit to be ignited, or suffer, allow, or maintain any open fire within the jurisdiction of the Authority, except as provided in this Regulation . . . (b) Open burning may be done under permit:

Appellant's failure to apply for and obtain an open burning permit

FINDINGS OF FACT,

CONCLUSIONS OF LAW AND ORDER

1 violated respondent's Regulation I, Article IV, Section 4.01(b).

2 Respondent's Regulation I, Article IV, Section 4.01(b)(2)(v)
3 provides:

4 No material containing asphalt, petroleum products,
5 paints, rubber products, plastic or any substance
6 which normally emits dense smoke or obnoxious odors
7 will be burned.

8 In burning a quantity of insulated wiring the appellant has violated
9 respondent's Regulation I, Article IV, Section 4.01(b)(2)(v).

10 II

11 Under our State's policy of limited outdoor burning, it is not safe
12 to assume that building site materials may be indiscriminately disposed
13 of by open burning. Before igniting such fires it is the responsibility
14 of the citizen concerned to become aware of and to adhere precisely
15 to air pollution control rules, such as respondent's Regulation I.
16 Because, however, the violations committed by the appellant are his
17 first offenses against respondent's Regulation I, part of the assessed
18 penalty shall be suspended.

19 III

20 Any Finding of Fact which should be deemed a Conclusion of Law
21 is hereby adopted as such.

22 From these Conclusions the Pollution Control Hearings Board
23 makes this

24 ORDER

25 The \$100 civil penalty is affirmed, provided however, that \$65
26 of the civil penalty is suspended on condition that appellant not
27 violate respondent's regulations for a period of six months after this
Order becomes final.

1 DATED this 31st day of May, 1971.

2 POLLUTION CONTROL HEARINGS BOARD

3 William A. Harrison
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5 WILLIAM A. HARRISON, Hearing Examiner
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26 FINDINGS OF FACT,
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